

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

United States of America, Complainant v. Francisco's Restaurant,
Respondent; 8 U.S.C. 1324a Proceeding; Case No. 90100174.

ORDER OF DISMISSAL-SETTLED

E. MILTON FROSBURG, Administrative Law Judge

Appearances: **LEILA CRONFEL**, Esq., and **WELDON S. CALDBECK**,
Esq., for the Immigration and Naturalization
Service.

HARRY G. TATE, Esq., for Respondent.

Procedural Background:

Complainant, United States of America, through its Attorney, Leila Cronfel, filed a Complaint against Respondent, Francisco's Restaurant, Inc., on May 24, 1990. Exhibit A of the Complaint consisted of the Notice of Intent To Fine, served by the Immigration and Naturalization Service (INS) on March 27, 1990; Exhibit B was the Respondent's request for a hearing before an Administrative Law Judge submitted by Harry G. Tate, Attorney for Respondent and dated April 20, 1990.

On May 29, 1990, the Office of Chief Administrative Hearing Officer issued a Notice of Hearing on Complaint Regarding Unlawful Employment, assigning me as the Administrative Law Judge in this case and advising the parties of the hearing place in or around Durango, Colorado on a date to be established.

The proceeding, thus initiated in this office, involves liability for civil penalties for violations of Section 274A of the Immigration and Nationality Act (the Act), as amended by Section 101 of the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. Section 1324a. Count I of the Complaint alleges 23 violations of failure to properly complete section 2 of the Employment Eligibility Verification Form (Form I-9). Count II alleges one violation of failure to

complete sections 1 and 2 of the Form I-9. Count III alleges a failure to make available for inspection the Forms I-9 for nine individuals. The total civil penalty has been assessed at \$7,500.00.

The parties arrived at a settlement in this matter prior to the filing of an Answer by Respondent. On July 9, 1990, the parties submitted a Joint Motion to Dismiss predicated upon a Settlement Agreement between the parties. A copy of the Settlement Agreement was enclosed with the Motion. The Motion to Dismiss was executed by Attorney Caldbeck for the complainant and by Attorney Tate for the Respondent. The Settlement Agreement was executed by Attorney Cronfel for the Complainant and Attorney Tate for the Respondent.

Although the regulatory treatment of dismissals is more cursory and less rigorous than is the treatment of consent findings, 28 C.F.R. Section 68.12, nothing contained in the regulation should be understood as denying to the Administrative Law Judge the power to inquire, indeed, the obligation in an appropriate case, concerning the form and substance of an underlying agreement to obtain a dismissal.

I have carefully reviewed the Settlement Agreement and accept it as the predicate for dismissal of this proceeding, and not as the predicate for consent findings and a decision by me as the Administrative Law Judge.

There being no apparent reason to disturb the intent of the parties to terminate this proceeding and to remit them to a posture as if there had been no request for a hearing under 8 U.S.C. Section 1324a(e)(3), it is appropriate that I grant the Joint Motion to Dismiss in the instant proceeding based upon their notification made pursuant to 28 C.F.R. Section 68.12(a)(2).

In my examination of the Settlement Agreement, I found paragraph 6 to be inconsistent with paragraph 21. I do find paragraph 6 to be the correct statement, in that the Settlement Agreement does not take effect until the Administrative Law Judge issues the Order of Dismissal, thus rendering a final and unappealable order. Paragraph 21, therefore, should be excluded.

Accordingly,

(1) The hearing originally scheduled to be held at Durango, Colorado is hereby cancelled.

(2) This proceeding is dismissed, settled.

IT IS SO ORDERED: This 26th day of July, 1990, at San Diego, California.

E. MILTON FROSBURG
Administrative Law Judge